

MICHAEL A. JACOBS (CA SBN 111664)
MJacobs@mofo.com
ARTURO J. GONZÁLEZ (CA SBN 121490)
AGonzalez@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Tel: 415.268.7000 / Fax: 415.268.7522

KAREN L. DUNN (*Pro Hac Vice*)
kdunn@bsfllp.com
HAMISH P. M. HUME (*Pro Hac Vice*)
hhume@bsfllp.com
BOIES SCHILLER FLEXNER LLP
1401 New York Avenue, N.W.
Washington, D.C. 20005
Tel: 202.237.2727 / Fax: 202.237.6131

WILLIAM C. CARMODY (*Pro Hac Vice*)
bcarmody@susmangodfrey.com
SHAWN J. RABIN (*Pro Hac Vice*)
srabin@susmangodfrey.com
SUSMAN GODFREY LLP
1301 Avenue of the Americas, 32nd Floor
New York, New York 10019
Tel: 212.336.8330 / Fax: 212.336.8340

Attorneys for Defendants
UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF MARCIE
BRIMER IN SUPPORT OF
DEFENDANTS UBER
TECHNOLOGIES, INC.'S AND
OTTOMOTTO LLC'S RESPONSE TO
WAYMO'S SUBMISSION TO
SPECIAL MASTER COOPER
REGARDING THE JACOBS
DOCUMENTS**

Judge: Hon. William H. Alsup
Trial Date: February 5, 2018

1 I, Marcie Brimer, declare as follows:

2 1. I am an associate with the law firm of Morrison & Foerster LLP representing
3 Defendants Uber Technologies, Inc. and Ottomotto LLC (collectively, “Uber”) in this matter. I
4 am a member in good standing of the Bar of the District of Columbia. I make this declaration in
5 support of Uber’s Response to Waymo’s Submission to Special Master Cooper Regarding the
6 Jacobs Documents. I make this declaration based on personal knowledge and if called as a
7 witness, I could and would competently testify to the matters set forth herein.

8 2. I attended a telephonic meet and confer with Special Master Cooper and counsel
9 for Waymo on Saturday, July 1, 2017, from approximately 10:00 a.m. to 10:30 a.m. I joined the
10 meet-and-confer call by phone from my residence and took notes during the call. Attached as
11 **Exhibit A** is a true and correct copy of my notes transcribing the meet-and-confer telephone call
12 on July 1, 2017. During that call, Uber counsel Ed Takashima stated that he “hope[d] that we [the
13 parties] can exchange what we’re doing so far as custodians and search terms go and have a frank
14 discussion about what’s feasible” so “that we can get a resolution” as to “what docs were
15 searched and collected as part of the RFP process.” Ex. A at 1-2. Waymo agreed to, and the
16 Special Master directed the parties to, “exchange Monday of [sic] all the terms that have been
17 searched and all the custodial and non-custodial searches that have been searched *in an attempt to*
18 *stave off disputes on RFPs.*” *Id.* at 4 (emphasis added). Waymo counsel Jeff Nardinelli also
19 stated that “there should at least be *a presumption that if we use the agreed upon search terms*
20 *and custodians then the production is sufficient.*” *Id.* at 3-4 (emphasis added). The Special
21 Master agreed with and adopted Waymo’s position: “*If you agree on search terms and*
22 *custodians, it could be that you could only be permitted to challenge a production upon a*
23 *showing of good cause as to why it wasn’t raised at the outset.* Look, there’s going to be
24 disputes between the parties, but we have a procedure for resolving disputes. We should try to
25 come as close as we can to resolving this on Monday, but *on a showing of good cause you can*
26 *raise more disputes.*” *Id.* at 4 (emphasis added).

27 3. I attended a telephonic meet and confer with Uber counsel Sylvia Rivera and
28

1 Waymo counsel James Judah on Saturday, July 1, 2017, from approximately 10:30 to 11:55 a.m.,
2 which continued on Sunday, July 2, 2017, at approximately 10:30 a.m. I joined the meet-and-
3 confer telephone call by phone from my residence and took notes during the call. Attached as
4 **Exhibit B** is a true and correct copy of my contemporaneous notes transcribing the meet-and-
5 confer telephone call on July 1 and 2, 2017.

6 4. I attended a telephonic meet and confer with Special Master Cooper and counsel
7 for Waymo on Friday, July 7, 2017, at approximately 10:00 a.m. I joined the meet-and-confer
8 telephone call by phone from my office and took notes during the call. Attached as **Exhibit C** is
9 a true and correct copy of my contemporaneous notes transcribing the meet-and-confer telephone
10 call on July 7, 2017.

11 5. I attended a telephonic meet and confer with Special Master Cooper and counsel
12 for Waymo on Monday, July 10, 2017, at approximately 1:00 p.m. I joined the meet-and-confer
13 call by phone from my office and took verbatim notes during the call. Attached as **Exhibit D** is a
14 true and correct copy of my contemporaneous notes transcribing the meet-and-confer telephone
15 call on July 10, 2017.

16 6. I attended a meet and confer telephone call with Special Master Cooper and
17 counsel for Waymo on Monday, July 24, 2017, at approximately 11:30 a.m. I joined the meet-
18 and-confer call by phone from my office and took verbatim notes during the call. Attached as
19 **Exhibit E** is a true and correct copy of my contemporaneous notes transcribing the meet-and-
20 confer telephone call on July 24, 2017.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is
22 true and correct. Executed this 8th day of December, 2017, in Washington, DC.

23
24 /s/ Marcie Brimer

25 Marcie Brimer
26
27
28

ATTESTATION OF E-FILED SIGNATURE

I, Arturo J. González, am the ECF User whose ID and password are being used to file this Declaration. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Marcie Brimer has concurred in this filing.

/s/ Arturo J. González

Arturo J. González